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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
1998 Biennial Regulatory Review -	)	CC Docket No. 98-171
Streamlined Contributor Reporting	)	
Requirements Associated with Administration	)	
Of Telecommunications Relay Service, North	)	
American Numbering Plan, Local Number	)	
Portability, and Universal Service Support	)	
Mechanisms	)	
	)	
Telecommunications Services for Individuals	)	CC Docket No. 90-571
With Hearing and Speech Disabilities, and the	)	
Americans with Disabilities Act of 1990	)	
	)	
Administration of the North Amencan	)	CC Docket No. 92-237
Numbering Plan and North American	)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution	)	
Factor and Fund Size	)	
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

COMMENTS OF METROCALL HOLDINGS, INC.

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Date: January 29,2003

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SUMMARY

The record in this proceeding does not support the adoption of a connection-based contribution mechanism. Revenue-based mechanisms remain the most equitable, administratively convenient means of assessing USF contributions, and the flaws previously identified by the Commission in per-line and other non-revenue based mechanisms are not resolved by the proposals in this proceeding. The interim mechanism, by relying on projected, collected revenues, should eliminate the problems experienced by carriers with declining customer bases. The Commission should allow an opportunity for the interim mechanism to work prior to radically restructuring its USF contribution mechanism.

If the Commission, against the great weight of comments in this proceeding, nonetheless adopts a connection-based mechanism, it must adjust the proposals in the *Second FNPRM* to make them equitable and nondiscriminatory toward messaging carriers. Narrowband messaging uses far less time and capacity on the PSTN than other services, and the contributions required of that industry sector should reflect that fact. Additionally, narrowband messaging is the most competitive of the telecommunications industries, and has been hit hardest by current economic conditions. The addition of a minimum 30% increase in USF contributions, which would be the best case under the proposals in the *Second FNPRM*, could threaten the viability of messaging carriers, who have limited spectrum on which to bundle revenue-enhancing services. The result would be the loss to consumers of a low-cost option for their telecommunications needs.

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COMMENTS OF METROCALL HOLDINGS, INC.

Metrocall Holdings, Inc. ("Metrocall"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R § 1.415 , hereby submits its comments in response to the Commission's ***Second Furrher Notice of Proposed Rulemaking ("Second FNPRM")*** in the above-captioned proceedings.[1] In support hereof, the following is respectfully shown:

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[1] ***Reporr and Order and Second Furrher Notice of Proposed Rulemaking,*** FCC 00-329 (released December **13,2002).** The ***Second FNPRM*** established a comment deadline of thirty days from Federal Register

I. Statement of Interest

Metrocall[2] is the second-largest wireless messaging company in the nation, trading over-the-counter under symbols MTOHV.OB (common stock) and MTOPV.OB (preferred). Through its licensee-subsidiary, Metrocall USA, Inc., Metrocall provides one-way and two-way wireless messaging services throughout the United States to more than four million subscribers. Metrocall, as a provider of messaging services, is a contributor to the Universal Service Fund ("USF"), and is likely to pay considerably more into the USF under any of the proposals in the ***Second*** *FNPRM*. Consequently, Metrocall is a party in interest with standing to tile comments in this proceeding.

II. Backeround.

In May 2001, the Commission commenced this proceeding to review its Universal Service Contribution methodology. The Coalition for Sustainable Universal Service ("CoSUS"), comprised of AT&T, MCI Worldcom, Level **3** and the e-Commerce and Telecommunications Users Group filed a proposal for a "connection-based" contribution mechanism, under which each camer would pay a flat universal service fee based on the number of "connections" that camer provided to the public switched telephone network. Not coincidentally, "pure" IXCs would make no USF contributions under that proposal.

Despite the overwhelming weight of comments (including a number of state utility commissions) in support of retaining the current revenue-based system, the state members of the Joint Board supported the adoption of some form of connection-based USF assessment system. **See,** *Ex Parte Recommendation of State* ***Joint*** *Board Members*

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publication, and was published in the Federal Register on December 30, 2002; therefore, these Comments are timely.

2 Metrocall was previously named Metrocall, Inc., but the company changed its name following its reorganization under Chapter 11 of the Bankruptcy Code, which was completed in early October 2002

(filed August 7, 2002). SBC and BellSouth also submitted a connection-based proposal of their own.

In the *Report and Order* ("*R&O*") accompanying the *Second* FNPRM, the Commission adopted an interim contribution mechanism, which will assess carriers' contributions based upon projected, collected interstate end-user telecommunications revenues, rather than on previous gross interstate end-user telecommunications revenues. *See R&O* at ¶ 29. The mobile wireless safe harbor for wireless telephone providers was raised from 15% to 28.5%; however, in light of the fact that the paging safe harbor had been established based upon the actual reported interstate revenues of paging carriers, the 12% safe harbor for paging/messaging services remained in effect. *Id.* at ¶¶ 21; 23.

The Commission proposed three distinct connection-based contribution mechanisms. The first, something of a hybrid of the CoSUS and SBC/BellSouth proposals, would require each telecommunications carrier to pay a flat monthly fee based on the number of "connections," subject to a mandatory minimum annual contribution. *Second FNPRM* at ¶ *75-85.* "Connections" would be defined as "facilities that provide end users with access to an interstate public or private network[.]" ***Id.*** at ¶ 76. Residential, single-line business, payphones and "mobile wireless" would pay $1 .00 per connection; multi-line business connections would be assessed a fee based upon capacity. *Id.* at ¶ 75. One-way paging would be assessed a fee of $0.10 **per** connection (basically, per pager); two-way messaging would be assessed at $0.20 per connection. *Id.* Those carriers without "connections" would be assessed a percentage of their revenues; *e.g.*, 1%. *Id.* at ¶ 78.

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The second proposal would also be based on "connections," but there would be a separate connection-based assessment for switched access and interstate transport (each function would basically be a contribution "unit"), and there would be different "tiers" of contributions based upon the capacity of the connection. *Id.* at ¶¶ 86-95. Providers of non-switched access and services not directly tied to connections would be assessed based on revenues, and the *de minimis* exemption would apply to this proposal as well. *Id.* at ¶¶ 86-87. One-way pagers would be counted as one-half of an access connection, and two-way pagers would be treated as one access connection. *Id.* at ¶ 87. The *Second FNPRM* also proposes two variations on this proposal, which would affect how wireline carriers are assessed; under both variations, some or all IXCs would be assessed on the basis of revenues. *Id.* at ¶¶ 92-95.

The third proposal would assess "connections" based on the number of telephone numbers assigned to end users (special access and private lines without phone numbers would be assessed based on revenue). *Id.* at ¶¶ 96-100. The *Second FNPRM* doesn't state what the proposed fee per number would be, but does request comment as to whether numbers assigned to pagers should be assessed at a lower rate than other numbers. *Id.* at ¶ 97.

III. The Commission Should Give the "Interim" Rules a Chance before Changing from a Revenue-Based System.

As a number of parties tiling comments and making *ex parte* presentations earlier in this proceeding noted, the vast weight of comments (including many filed by consumer advocates and governmental bodies) supported retaining a revenue-based contribution mechanism. *See, e.g.*, Reply Comments of The Concerned Paging Carriers (filed May

13, 2002) ("*CPC Reply* ***Commend'***); Comments of the General Services Administration (filed April 22,2002); AARP *Ex Parte* Letters (tiled April 13,2002 and November **14,** 2002). Metrocall agrees with those parties that revenue-based mechanisms are inherently more equitable and easier to administer than any of the contribution-based proposals in the record. Metrocall therefore respectfully submits that the Commission should allow sufficient time *to* observe the new, "interim" revenue-based contribution mechanism in practice before adopting a radically different contribution mechanism than that which carriers have employed since 1997.

The major, uncontroverted' criticism of the revenue-based mechanism in place prior to the *R&O* was that the ''lag'' created by assessing contributions based upon revenues billed six months previously unfairly benefited start-ups and other carriers with increasing subscriber bases, while penalizing carriers with declining customer bases. See *e.g.*, CoSUS *Ex Parte* Presentation (filed September 26, 2002) at **4.** Many carriers have acknowledged the difficulties of a system requiring assessments based upon revenues they no longer have, and attempting to recover those costs from a dwindling number of subscribers. That is certainly a problem with which paging carriers *are* familiar; Metrocall has gone from approximately 5.9 million customers at the end of 2001, to slightly more than **4** million subscribers today. See Metrocall Form 10-Q, pp. 31-32

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[3] Although CoSUS has also claimed that IXCs' declining minutes of use threatened the long term sufficiency of any revenue-based **USF** contribution mechanism a number of commenters aptly pointed out that, to the extent customers increasingly use wireless telephone services for long distance calls, those wireless carriers make correspondingly larger contributions to the USF. ***See,*** *e.g.*, Reply Comments of Verizon Wireless (tiled May 13, 2002). Moreover, to the extent that the decrease in long distance MOUs **is** attributable to services not currently subject **to USF** contributions, such as IP telephony, that concern can be more directly addressed by including such services in the contribution base. ***See.*** *e.g.*, Verizon Wireless Notice of *Ex Parte* Presentation (filed September 13, 2002).

(filed November 14,2002). Other paging carriers have faced similar losses. *See, e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 – Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services,* Seventh Report, FCC 01-179 at p. 66 (released July 3, 2002) *("Seventh CMRS Competition Report");* Comments of Concerned Paging Carriers at 5-6 (filed April 22, 2002) (*"CPC Comments");* Reply Comments of Weblink Wireless, Inc. at 8 (filed May 13, 2002). Nonetheless, the newly-adopted interim mechanism, based upon carriers' projections of the revenues they will be able to collect from subscribers in the upcoming quarter, with an annual true-up, resolves (or at least greatly alleviates) this "lag" problem. Carriers, like many IXCs and nearly all messaging carriers, who have been experiencing the loss of customers to other technologies should be able to readily estimate, based upon their past losses and previous histones of uncollectibles, the amounts that they can expect to collect in the upcoming quarter.

Not long ago, the Commission rejected non-revenue based methods as administratively burdensome and potentially discriminatory between different services or classes of services. Said the Commission:

> "We do not adopt commenters' suggestions that contributions be calculated entirely on non-revenues-based measures, such as a per-minute or per-line basis at this time. … It would be administratively difficult to calculate an equivalent per-minute contribution for carriers that do not charge customers on a per-minute basis. In addition, we find that these approaches are not competitively neutral because they may inadvertently favor certain services or providers over others if the "equivalency ratios" are improperly calculated or inaccurate."

See, Federal-State Joint Board On Universal Service, Report and Order, 12 FCC Rcd 8776, ¶ 852 (1997) *("Universal Service Order").* There is no record evidence that would suggest that these conclusions are no longer valid. Indeed, the proposals in the *Second*

FNPRM do not eliminate the problems found by the Commission in 1997, as evidenced by the fact that the Commission is seeking guidance as to how to measure the capacity of different multi-line business connections for USF assessment purposes. ***Second FNPRM*** at ¶ 81. The Commission must now find "equivalency ratios" for different kinds of connections, recognizing that there is the potential to affect customer choices solely based on a regulatory factor such as USF payments. *Id.* at ¶ 82.

Not only does the ***Second FNPRM*** fail ***to*** distinguish the problems previously found with non-revenue based proposals and those inherent in the current proposals, it provides no analysis to demonstrate that revenue-based methods, and in particular the interim mechanism, no longer serve the public interest. Rather, the ***Second FNPRM*** expresses only perceived concerns and rank speculation regarding the future of revenue-based funding mechanisms, ***see*** ¶¶ 69-70; that is insufficient to justify abruptly changing rules previously found to serve the public interest. ***See, e.g., Greater Boston Television Corporation,*** 444 F2d 841,852 (D.C. Cir. 1970) ("an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute").

Even assuming that bundling of information and telecommunications technologies may, in the future, lead to precipitous decreases in "telecommunications" revenue as more services are categorized as non-telecommunications information services, *cf.* CoSUS *Ex Parte* Presentation (filed September 26,2002) at **3;** there are more direct ways of addressing that issue. Indeed, the Commission has already undertaken a proceeding to consider expanding the USF contribution base to include broadband services not currently covered. *In the Matter of Appropriale Framework for Broadband Providers,* FCC 02-42 (released February 15, 2002).

In short, there is nothing in the record to date that supports **a** radical revision of the USF contribution mechanism. The adoption of a type of mechanism previously rejected by the Commission is evidently not justified at this time.

IV. The Contribution Requirements Imposed on Paging Carriers Under any of the Proposed Collection-Based Methodologies are Still too High, and Will Harm Consumers and Carriers Alike.

Notwithstanding the absence of record evidence to support the proposed changes, if the Commission adopts a connection-based contribution mechanism, Metrocall respectfully submits that all of the proposed mechanisms, although far superior to the original CoSUS and SBC/BellSouth proposals, remain inequitable and discriminatory as applied to paging carriers, in violation of the "equitable and nondiscriminatory" standard of the Act. *See* 47 U.S.C. § 254(b)(4). Under the first proposal, which would impose a $0.10 per unit assessment on pagers, paging carriers will experience an 30% increase ***per pager*** in the amounts that they must contribute to the USF. Under the second proposal, paging carriers will pay fully half of the amount paid by two-way voice connections that make sufficiently greater use of the PSTN (in addition to having far higher revenues per unit in service); and, it is unclear what the impact of the third proposal will be. Metrocall therefore respectfully suggests that, if the Commission **adopts** any contribution-based proposal, it adopt a variant of the first proposal, but further reduce the amount of paging carrier contributions to accurately reflect the limited amount of capacity and use of PSTN made by messaging services, in accordance with Arch's ***ex parte*** letter of September 19, 2002.

The Commission has previously found competitive neutrality to be one of the fundamental principles of the USF program. "In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another." ***Universal Service Order, supra.*** at ¶ 47. The Commission endeavored to construct a USF program that would allow market forces to determine the providers and technologies used by consumers, and prevent those then-new regulatory requirements from conveying commercial advantages or disadvantages that may "skew the marketplace." *Id.* at ¶ 48. Metrocall respectfully submits that the proposals in the *Second FNPRM* ignore the principles of non-discrimination and competitive neutrality that are fundamental to the USF program, and will likely result in consumers making decisions about their telecommunications technologies based upon regulatory costs, rather than the advantages of the technology or the true costs of service that a competitive market would otherwise produce.

The record **is** replete with filings of low-use cellular customers who believe that the additional costs of the proposed connection-based mechanisms will raise the price of their services beyond what they are able and willing to pay. ***See, e.g.*** Letters of Michael Price, ***et al.*** The problem is even more acute for paging and messaging services. **As** the record in this proceeding amply establishes, paging is the lowest-cost of all telecommunications services available to consumers – on average, $8.00 per month. ***See, e.g., CPC Comments*** at 6. The paging and messaging market is highly competitive, and exceptionally price-sensitive. *Id.* Many of the paging industry's customers *are* public safety organizations and other governmental entities that have strict budgetary limitations. Other subscribers are individual consumers, who use messaging as a complement to two-way voice communications – a means to "keep in touch" without incurring per-minute rates.

An increase of 30% per one-way pager per month, and far more for two-way units (as would be the case under the first proposal in the *Second FNPRM*) may **well** affect a customer's decision whether or not to remain with his or her current messaging carrier, or whether to give up their messaging service entirely. *See* e.g., WebLink Wireless *Ex Parte* Letter (tiled November 22,2002). Under the other proposals in the *Second FNPRM*, the increased costs to messaging carriers, and the resulting effect on the industry and its subscribers, are likely to be worse.

In addition to the difficulties associated with attempting to pass through even a modest USF increase in the highly price-sensitive messaging industry, USF is not the only regulatory cost that messaging carriers must absorb. Like other telecommunications carriers, paging and messaging providers also contribute to the funds supporting Telecommunications Relay Services, North American Numbering Plan Administration, and Local Number Portability. In 2002, paging carriers saw a substantial increase of $0.04 per unit in their annual regulatory fees. *FY* 2002 ***Regulatory Fees,*** FCC 02-205 (released July 5, 2002) Additionally, numerous state and local governments impose a wide variety of taxes and fees on wireless services, including paging and messaging. **All** of those costs of doing business must somehow be recovered.

Although the Commission suggests that carriers need not pass through USF increases to their customers, it is highly questionable how long a messaging carrier choosing to absorb the increased USF costs could survive: the margins in the paging and messaging industries are razor-thin, so carriers have little or no surplus from which cover their USF contributions. *Cf. CPC Comments* at **3-4,** Comments of Teletouch, Inc. at **3** (filed April 22,2002). **As** the commenters have noted, and the Commission's own records reveal, over the course of the past two years the largest nationwide paging and messaging carriers have sought protection under the Bankruptcy Code; one of those carriers, TSR Wireless, has been liquidated.

Despite being particularly hard hit by current economic conditions, there remain hundreds of paging carriers in the United States; messaging remains the most competitive sector of the telecommunications industry. ***See*** *Seventh CMRS Competition Report,* ***supra,*** at p. 66. The two-way messaging market is still developing, and none of the narrowband PCS providers is yet fully competitive with other wireless data service providers. *Cf.*, ***id.*** at n. **444.** There is not a single company in the messaging sector with sufficient market power to allow it to forego recovering its costs for any extended period. Consequently, increasing messaging carriers' USF burden from the current estimated $0.07 per unit to $0.10 per one-way unit, and to $0.20 per two-way unit, will have a disproportionate impact on messaging carriers and their customers.

In addition to the economic differences between the messaging sector and other portions of the telecommunications industry, there are practical differences between the technologies that render it inequitable to treat messaging carriers in the same manner as those entities with greater bandwidth. **A** one-way paging channel is only 25 kHz, and the largest channelization for a narrowband PCS license totals 100kHz; yet messaging carriers compete for customers with cellular, broadband PCS and enhanced SMR providers holding exponentially more spectrum. Messaging carriers simply lack the spectrum to provide the variety of services that broadband carriers can, and therefore stand to suffer greater harm if the costs of providing services increase – narrowband carriers may not always be able to bundle value-added services that will permit them to increase their prices in a way that helps cover rising regulatory costs.

Moreover, as Arch demonstrated in its *ex parte* presentation of September 19, ***2002 ("Arch September Ex Parte"),*** one-way paging transmission operate only at a maximum of **3.2** kbps, and two-way messaging at **6.4** kbps, as compared to the **64** kbps for a standard two-way voice transmission. In contrast to the average 2-minute holding time of a wireless telephone call (wireline calls are typically longer), the average paging "call" is only connected to the public switched network for 15 seconds. *Id.*

If the Commission moves to any form of "connection based" or number-based methodology, that methodology should reflect the significantly lesser use that messaging makes of the interstate network being supported by the USF. The Commission's second connection-based proposal, which would treat a one-way page as the equivalent of a one-half of a two-way voice call, and would treat two-way paging as the equivalent of a full two-way voice connection, is at odds with the technical realities of the services in question. Similarly, any proposal that would assess messaging carriers on the same per-number basis would impose a burden on those carriers well out of proportion to the benefit they receive.[4] One-way paging carriers have only one-twentieth of the capacity of

[4] Messaging carriers, like all other telecommunications carriers, already pay to **support** telephone numbering administration. See 47 C.F.R. §§ 52.17; 52.32(a).

voice carriers. Two-way messaging carriers have only one-tenth of that capacity. ***See, Arch*** *September Ex* ***Parte.*** In order to be equitable, any connection-based methodology should reflect the fractional use of the PSTN made by messaging carriers. If a standard two-way voice connection is to be assessed at $1.00, one-way and two-way messaging connections should be assessed at no more than $0.05 and $0.10, respectively.

Conclusion

WHEREFORE, for all the foregoing reasons, Metrocall respectfully submits that the Commission should retain a revenue-based USF contribution methodology, or, if a connection-based mechanism is adopted, it should accurately reflect the capacity of the connection involved.

Respectfully submitted,

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